

ORIGINAL
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Attorney for Plaintiff
Don Bernard

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DON BERNARD, an individual,

Plaintiff,

vs.

DOES 1-5, individuals,

Defendants.

Case No: **CV 11-03414** **PSG**
COMPLAINT FOR:

1. FALSE ADVERTISING
[Section 43(a) of the Lanham Act,
15 U.S.C. § 1125(a)]
2. DEFAMATION
[California Common Law]
3. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE
[California Common Law]

DEMAND FOR JURY TRIAL

PLAINTIFF'S ORIGINAL COMPLAINT FOR DAMAGES AND PUNITIVE DAMAGES

1. This is an action by Don Bernard ("Plaintiff"), to recover damages for the malicious actions of anonymous writers/publishers of a blog post and comments to Internet web pages (Does 1-5 inclusive, collectively referred to herein as "Defendants"). The outrageous, defamatory, and false accusations are causing irreparable damage to Plaintiff's reputation and impinging on his ability to conduct business as an independent consultant. The Plaintiff brings this action on the basis of false advertising, defamation, and intentional interference with

1 prospective economic advantage and alleges as follows:

2 **PARTIES**

3 2. Plaintiff Don Bernard is an individual residing in the state of Montana, doing business
4 as in independent business consultant both nationally and internationally. Plaintiff has an
5 excellent reputation in the energy/power and hunting/fishing industries and has been an
6 independent business consultant for over twenty years. As an independent consultant, the
7 success of Plaintiff's business depends in part on the strength of his reputation.

8 3. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of Defendants Does 1 through 5 are unknown to Plaintiff, because Defendants are and yet remain
10 "anonymous," unidentified users of the Internet. Plaintiff therefore sues Defendants by fictitious
11 names. Plaintiff is informed and believes and therefore alleges that each of the Defendants
12 designated herein as a fictitiously named Defendant is responsible in some manner for the acts
13 and events alleged in the Complaint and for proximately causing the injuries to Plaintiff alleged
14 in the Complaint. If necessary, Plaintiff will seek leave of court to amend this Complaint to state
15 their true names and capacities when ascertained.

16 **JURISDICTION AND VENUE**
17 **Subject Matter Jurisdiction**

18 4. The First Claim for Relief relates to false description or representation (false
19 advertising) and arises under the Lanham Act of 1946, as amended, 15 U.S.C. §§ 1125.
20 Jurisdiction in this Court is proper pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331.

21 5. This Court also has subject matter jurisdiction over this matter based upon diversity
22 jurisdiction, pursuant to 28 U.S.C. § 1332.

23 6. This Court has supplemental jurisdiction over Plaintiff's claims arising under the laws
24 of California pursuant to 28 U.S.C. § 1367(a) because these claims are based on the same

1 operative facts, and the Court's exercise of jurisdiction over the pendant state law claims will
2 promote judicial economy, convenience, and fairness to the parties.

3 **Personal Jurisdiction**

4 7. This court has personal jurisdiction over the Defendant because, Plaintiff is informed
5 and believes, and on that basis alleges, that the Defendant has conducted business in this District
6 sufficient to subject it to personal jurisdiction in California and in this court.

7 8. Additionally, Plaintiff is informed and believes, and on that basis alleges, that the
8 Defendant has committed acts that avail themselves of California law and that caused injury to
9 persons in California, sufficient to subject it to personal jurisdiction in California.

10 **Venue**

11 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(a).

12 **GENERAL FACTS**

13 10. Plaintiff is informed and believes that Defendants have engaged in an Internet
14 campaign to disparage him with false and malicious statements and cause damage to his
15 reputation.

16 11. In or about October 2010, Defendants, using Blogger profile number
17 07477970712357459080, published or caused to be published the blog "Donald Ray Bernard,
18 Glacial Energy, Gemico Mining" (available at <http://drblog1.blogspot.com/>). That blog
19 contained false and defamatory statements that Plaintiff had been convicted of violating certain
20 Texas Rules of Professional Conduct.

21 12. On or around January 2011, on the website complaintsboard.com, Defendants left
22 additional false and defamatory statements about Plaintiff, including claims that Plaintiff had been
23 disbarred and convicted in Texas.

1 13. On February 7, 2011, Defendants posted a comment on the website
2 "pissedconsumer.com" including false and defamatory claims that Plaintiff had been disbarred and
3 found guilty of fraud.

4 14. On or around May 2011, Plaintiff became aware that Defendants had opened an email
5 account under the name "DonBernard" at gmx.com for the purpose of sending emails that
6 purportedly originated from Plaintiff.

7 15. The Blog and the Comments were published, or caused to be published, by Defendants
8 on web pages accessible to the public through the Internet.

9 16. The Blog and Comments are false and defamatory. Plaintiff has not been convicted of
10 violations of the Texas Disciplinary Rules of Professional Conduct nor of fraud, and Plaintiff was
11 not disbarred in the state of Texas.

12 17. The Blog and Comments have damaged and will continue to damage Plaintiff's
13 reputation and business relationship with Plaintiff's business associates.

FIRST CAUSE OF ACTION

False Advertising

[Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)]

18. Plaintiff realleges and incorporates the allegations in paragraphs 1 to 17 above as though fully set forth herein.

19. Defendants have made false and misleading statements of fact about Plaintiff and Plaintiff's business practices.

20. The false and misleading statements of fact about Plaintiff and Plaintiff's business practices are both literally false, and impliedly false.

21. The false and misleading statements have deceived a substantial segment of the intended audience, namely, members of the general public and business associates of Plaintiff.

22. Members of the general public and business associates of Plaintiff have relied on the statements of Defendants in their decision whether or not to engage Plaintiff's services.

23. Defendants have placed their false and misleading statements into interstate commerce.

24. Plaintiff was injured due to the false advertising of Defendants as described herein in an amount to conform to proof at the time of trial.

25. As a direct and proximate result of Defendants' acts of false advertising, Plaintiff has been and continues to be injured in his business and property and has sustained and will continue to sustain substantial damage to his business, goodwill, reputation, and profits in an amount not presently known.

SECOND CAUSE OF ACTION

Defamation

[California Common Law]

26. Plaintiff repeats and incorporates by reference each and every allegation set forth in paragraphs 1 through 25, inclusive.

1 27. By posting the Blog and Comments on the Internet, Defendants published or caused to
2 be published the Blog and Comments to at least one third party, and made the Blog and Comments
3 available to Internet users.

4 28. The Blog and Comments are, and at all relevant times were, false and defamatory, and
5 defamatory on their face as they apply to Plaintiff.

6 29. The Blog and Comments are, and at all relevant times were, of a matter and character
7 that have the tendency to injure Plaintiff's reputation.

8 30. The Blog and Comments are not and were not privileged.

9 31. On information and belief, Defendants published or caused to be published the Blog
10 and Comments either with the knowledge that they were false, or with conscious disregard for the
11 truth.

12 32. By the acts alleged herein, Defendants acted with malice and intentionally caused
13 damage to Plaintiff.

14 33. As a proximate result of Defendants publication of the Blog and Comments, Plaintiff
15 has suffered loss to his trade, business and reputation, all contributing to Plaintiff's general and
16 special damages.

17 **THIRD CAUSE OF ACTION**
18 **Intentional Interference with Prospective Economic Advantage**
19 **[California Common Law]**

20 34. Plaintiff repeats and incorporates by reference each and every allegation set forth in
21 paragraphs 1 through 33, inclusive.

22 35. Plaintiff had a prospective business advantage and a strong probability of future
23 economic benefit from potential customers and business associates when Defendants distributed
24 the false statements to them.

36. Defendants interfered with Plaintiff's relationships with his customers and business associates by publishing the false statements to Plaintiff's customers and business associates and injuring Plaintiff's relations with those customers and business associates.

37. In publishing the False Statements to Plaintiffs' customers and business associates, Defendants engaged in wrongful conduct. In doing this, Defendants knew that the persons to whom they published the False Statements were customers and business associates of Plaintiff. Defendants intended to interfere with Plaintiff's relations with its existing customers and with Plaintiff's prospective business advantage.

38. Defendants willfully and deliberately committed the wrongful acts alleged herein with the intent to harm Plaintiff financially and to induce Plaintiff's prospective customers and business associates to sever their present and prospective business relations with Plaintiff.

39. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered injury and damage to its business and goodwill in an amount to conform to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants Does 1-5, inclusive, as follows:

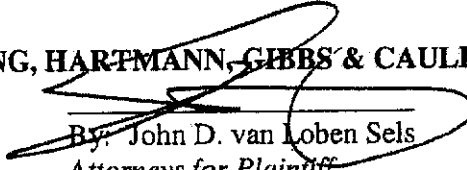
A. For judgment in favor of Plaintiff, and against Defendants, for general and special damages in such amounts as may be proven at trial;

B. For judgment against Defendants for Plaintiff's costs of suit, including Plaintiff's reasonable attorneys' fees; and

C. For such other relief as the Court may deem just and proper.

DATED: July 12, 2011

WANG, HARTMANN, GIBBS & CAULEY

By: 
 John D. van Loben Sels
 Attorneys for Plaintiff
 Don Bernard

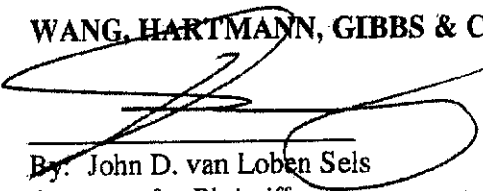
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all issues for which a jury trial is available.

DATED: July 12, 2011

Respectfully Submitted,

WANG, HARTMANN, GIBBS & CAULEY


By: John D. van Loben Sels

Attorneys for Plaintiff

Don Bernard

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